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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Eddie LaReece Pittman,

10 Plaintiff,

11 v.

12 Grand Canyon University, et al.,

13 Defendants.  
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No. CV-22-00254-PHX-DJH

**ORDER**

15 Pending before the Court is Defendants Grand Canyon University and Bina J.  
16 Vanmali's (collectively "Defendants") Motion for Attorneys' Fees (Doc. 22). Defendants  
17 filed this motion after the Court dismissed Plaintiff's Complaint with prejudice and  
18 terminated this matter. (Doc. 20). The Motion is unopposed, and the time to file a response  
19 has passed. *See* LRCiv 7.2(c). For the following reasons, the Court grants Defendants'  
20 Motion.

21 **I. Background**

22 Plaintiff's Complaint (Doc. 1-3 at 2–8), which was originally filed in Maricopa  
23 County Superior Court, brought several claims against Defendants under Title VII of the  
24 Civil Rights Act of 1964 and 42 U.S.C. § 1981. (*Id.* at 4). Plaintiff made these same general  
25 allegations against the same Defendants in a previous action filed in this Court, and that  
26 action was dismissed with prejudice. *Pittman v. Grand Canyon Univ.*, 2022 WL 36468 (D.  
27 Ariz. Jan. 4, 2022) (dismissing Plaintiff's Amended Complaint upon screening) (the "Prior  
28 Action"); *see also* (Doc. 7-1 at 6–11) (Plaintiff's complaint in the Prior Action). In

1 examining the Complaint and Prior Action, the Court ultimately dismissed Plaintiff's  
 2 Complaint with prejudice because it was barred by claim preclusion (Doc. 20 at 5).<sup>1</sup> The  
 3 Court also denied Plaintiff leave to amend. (*Id.*) Defendants now seek an award of  
 4 attorneys' fees in the amount of \$11,410.00 (Doc. 22-1 at 1). Pierce Coleman, PLLC  
 5 ("Pierce Coleman" or "Pierce Coleman Firm") represent Defendants.

## 6 **II. Legal Standard**

7 A party seeking an award of attorney's fees must show it is eligible for and entitled  
 8 to an award, and that the amount sought is reasonable. LRCiv 54.2(c). Eligibility and  
 9 entitlement to an award is dependent on "the applicable statutory or contractual authority  
 10 upon which the movant seeks an award[.]" LRCiv 54.2(c)(1). To determine whether an  
 11 award is reasonable, courts assess the following factors:

12 (1) the time and labor required, (2) the novelty and difficulty of the questions  
 13 involved, (3) the skill requisite to perform the legal service properly, (4) the  
 14 preclusion of other employment by the attorney due to acceptance of the case,  
 15 (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time  
 16 limitations imposed by the client or the circumstances, (8) the amount  
 17 involved and the results obtained, (9) the experience, reputation, and ability  
 18 of the attorneys, (10) the 'undesirability' of the case, (11) the nature and  
 length of the professional relationship with the client, and (12) awards in  
 similar cases.

19 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), *cert. denied*, 425 U.S.  
 20 951 (1976); *see also* LRCiv 54.2(c)(3).

21 Defendants seek an award under 42 U.S.C. § 1988. As this request is for a statutory  
 22 award, the Court will use the lodestar method to assess Defendants' proposal. *See Six*  
 23 *Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). Under the  
 24 lodestar method, courts determine the initial lodestar figure by taking a reasonable hourly  
 25 rate and multiplying it by the number of hours reasonably expended on the litigation.  
 26 *Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989) (citing *Hensley*, 461 U.S. at 433).

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<sup>1</sup> Plaintiff appealed the Court's claim preclusion finding to the Ninth Circuit. (Doc. 23).

### 1     **III. Discussion**

2           The Court will first determine whether Defendants are eligible for and entitled to an  
3     award of attorneys' fees. The Court will then assess the reasonableness of Defendants'  
4     request for attorneys' fees.

#### 5           **A. Eligibility and Entitlement**

6           Defendants are eligible for an award under 42 U.S.C. § 1988, which states:

7           In any action or proceeding to enforce a provision of [42 U.S.C. §] 1981, . .  
8           . the court, in its discretion, may allow the prevailing party, other than the  
9           United States, a reasonable attorney's fee as part of the costs, except that in  
10          any action brought against a judicial officer for an act or omission taken in  
11          such officer's judicial capacity such officer shall not be held liable for any  
12          costs, including attorney's fees, unless such action was clearly in excess of  
13          such officer's jurisdiction.

14          42 U.S.C. § 1988(b). Defendants argue they are entitled to an award of attorneys' fees  
15          because Plaintiff's claims were frivolous and his conduct "unnecessarily protracted this  
16          litigation." (Doc. 22 at 3).

17          Under 42 U.S.C. § 1988, prevailing defendants are awarded attorneys' fees "only  
18          where the action brought is found to be unreasonable, frivolous, meritless or vexatious."  
19          *Mayer v. Wedgewood Neighborhood Coalition*, 707 F.2d 1020, 1021 (9th Cir. 1983)  
20          (quoting *Christiansburg Garment Co. v. Equal Emp't Opportunity Comm'n*, 434 U.S. 412,  
21          98 S. Ct. 694 (1978)); *see also Fox v. Vice*, 563 U.S. 826, 833 (2011). "A defendant need  
22          not show that every claim in a complaint is frivolous to qualify for fees. *Id.* at 835 ("[A]  
23          court may reimburse a defendant for costs under § 1988 even if a plaintiff's suit is not  
24          wholly frivolous."). However, "[i]n a suit . . . involving both frivolous and non-frivolous  
25          claims, a defendant may recover the reasonable attorney's fees he expended solely because  
26          of the frivolous allegations." *Fox*, 563 U.S. at 840–41.

27          As mentioned, Plaintiff brought the same allegations here as he did in the Prior  
28          Action, which this district characterized as a "rambling narrative that provides 'no way to  
        determine what causes of action are being raised, against which defendants, for what  
        conduct.'" *Pittman*, 2022 WL 36468, at \*1 (internal citations omitted). These allegations

were dismissed with prejudice on two occasions. *Id.*; (Doc. 20). Thus, the Court agrees with Defendants that Plaintiff's claims are legally frivolous. The Court also views the action as vexatious. This is because Plaintiff's request to amend his Complaint was an "effort to escape the Court's jurisdiction and claim preclusion" that, if permitted, "would [have] unduly prejudice[d] Defendants by forcing them to relitigate precluded claims in state court." (Doc. 20 at 5) (denying Plaintiff's request to amend on grounds of undue delay, bad faith, prejudice, and futility).

In sum, Defendants are eligible for and entitled to an award of attorneys' fees under 42 U.S.C. § 1988 because Plaintiff's action is frivolous and vexatious. *Mayer*, 707 F.2d at 1021.

## **B. Reasonableness of Award**

The Court must proceed to determine whether Defendants' request for attorneys' fees is reasonable by assessing the twelve *Kerr* factors.

### **1. Time and Labor Required**

The Task-Based Itemized Statement of Fees ("Itemized Statement") provided by Defendants reflects that the Pierce Coleman Firm spent 56.30 hours of time on this matter, totaling to \$11,410 in fees. (Doc. 22-2 at 7). In its Motion, Defendants represent that Pierce Coleman attorneys billed 42.20 hours<sup>2</sup> of time to dismiss Plaintiff's claims (Doc. 22 at 5). Given the fact that Plaintiff's action is frivolous and vexatious, the Court finds the time and labor required to represent Defendant as accounted for in the Itemized Statement are accurate and reasonable. *See* LRCiv 54.2(e)(2) ("The party seeking an award of fees must adequately describe the services rendered so that the reasonableness of the charge can be evaluated."). Moreover, it appears that Defendants did not utilize any theories developed in this Motion for Attorneys' Fees in their previous Motion to Dismiss (Doc. 7) or in the Prior Action.

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<sup>2</sup> Upon the Court's review of the Itemized Statement, it appears that Pierce Coleman attorneys billed 49.2 hours. Nonetheless, the Court finds the hours accounted for in the Itemized Statement is reasonable and accurate.

1                   **2. Novelty and Difficulty**

2           The Court finds that this case did not present any novel or difficult issues.

3                   **3. Requisite Skill**

4           The Court finds it takes a moderate amount of skill to litigate civil rights cases.

5                   **4. Preclusion of Other Employment**

6           Defendants’ attorneys explain they were not precluded from other employment.  
7 (Doc. 22 at 5).

8                   **5. Customary Fee**

9           Pursuant to the engagement letter signed by Defendants, Defendants agreed to the  
10 following billing rates: \$250.00 for Partners and Of Counsel, \$200.00 for Associates, and  
11 \$100.00 for Law Clerks and Paralegals. (Doc. 22-2 at 13). These are the rates that were  
12 charged in the Itemized Statement (*Id.* at 6–7). Defendants further represent that “[t]hese  
13 rates are at, or below, the market rate for employment law services in the Phoenix  
14 metropolitan area and are lower than the firm charges many of its clients.” (Doc. 22 at 5).

15                   **6. Fixed or Contingent Fee**

16           Defendants did not enter into a contingent fee agreement with its attorneys.

17                   **7. Time Limitations**

18           There is no indication that Defendants placed any time limitations on counsel.

19                   **8. Amount Involved and Results Obtained**

20           Plaintiff’s sought \$550,000.00 in compensatory and punitive damages. The Court  
21 ultimately dismissed this action with prejudice because it is barred by claim preclusion  
22 (Doc. 20 at 5). In hindsight, additional litigation in this matter could have been avoided if  
23 Plaintiff heeded the Court’s initial dismissal on the merits as Plaintiff’s subsequent claims  
24 were frivolous. *See supra* Section III.A.

25                   **9. Experience, Reputation, and Ability of the Attorneys**

26           Defendants’ attorneys represent that “Pierce Coleman PLLC attorneys possessed  
27 the appropriate degree of skill required to adequately address Plaintiff’s legal arguments  
28 and factual misrepresentations made to the Court.” (Doc. 22 at 6).

